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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/535,079

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Richard Kellerer

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VAN OPHEM & VANOPHEM, PC
REMY J VANOPHEM, PC
51543 VAN DYKE
SHELBY TOWNSHIP, MI 48316-4447

EXAMINER

ELOSHWAY, NIKI MARINA

ART UNIT

PAPER NUMBER

3781

MAIL DATE

DELIVERY MODE

02/24/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/535,079	Applicant(s) KELLERER ET AL.	
	Examiner NIKI M. ELOSHWAY	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Applicant's amendments, filed December 5, 2008, are sufficient to overcome the rejection under 35 U.S.C. 112, second paragraph, set forth in the previous Office Action.. The rejection of claim 1-14 under 35 U.S.C. 112, second paragraph, has been withdrawn.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 6-11, 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Von Holdt (U.S. 5,979,691). Von Holdt teaches a container 10, of plastic, having a lid 12 for closing the container. The lid has a receiving area at 22 in which, when the container is in the closed state, the container lip 16 is held. The interacting latch-detent hook members and sealing surfaces, which are shown in figures 3 and 5, are provided in the receiving area of the lid and on the lip of the container opening, the catch members are configured such that when the container is in the closed state, the sealing surfaces are pressed together reliably to form seals. The receiving area of the lid and the said lip of the said container opening are engineered such that closure of the container with the lid is effected by a pushing of the lid onto the container from above. The container of Von Holdt has 8 latch-detent hook member pairs.

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Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 5 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Von Holdt (U.S. 5,979,691) in view of Wagli (CH 672,473). Von Holdt discloses the claimed invention except for the gasket. Wagli teaches that it is known to provide a container with a gasket. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Von Holdt with the gasket of Wagli, in order to better seal the container even when surface irregularities occur on the container lip or lid channel.

6. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Von Holdt (U.S. 5,979,691) in view of Lund (WO 01/19697 A1). Von Holdt discloses the claimed invention except for the latch-detent hook members remaining in the double walled portion. Lund teaches that it is known to provide a container wherein the latch-detent hook members remain in the double walled portion. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Von Holdt with the latch-detent hook members remaining in the double walled portion, as taught by Lund, in order to prevent multiple pieces from becoming separated from the container assembly.

Response to Arguments

7. Applicant's arguments filed December 5, 2008 have been fully considered but they are not persuasive. Applicant argues that Von Holdt “does not disclose a lid having a receiving area in which a container lip engages and is held wherein at least two latch-detent hook members are configured within

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the receiving area such that one of the latch detent hook members is released by way of a first predetermined movement in a first direction while the other of the at least two latch-detent hook members is released by way of a second predetermined movement in a direction opposed to the first direction so that in order to release the at least two latch-detent hook members located within the receiving area, the first and second predetermined movement must be in opposed directions” (page 12 of response filed 12/5/08). The Examiner disagrees with this position. Von Holdt teaches latch-detent hook members at 20a and 26a which must move in opposite direction to disengage from the container. The member 20a, must move radially outwardly to disengage from the container lip and the member 26a must move radially inwardly to disengage from 30a. In addition, the receiving area is considered to be the portion of the lid which extends downwardly from the perimeter of the top wall.

8. Applicant argues that motivation was not provided for the modification in the obviousness rejection. The Examiner disagrees with this position. Proper motivation was provided in the rejection. Specifically, the rejection states that it is desirable to provide a gasket on the Von Holdt container “in order to better seal the container even when surface irregularities occur on the container lip or lid channel.” Gaskets are well known and widely used in the container art to improve the seals between and container and closure.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action

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is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIKI M. ELOSHWAY whose telephone number is (571)272-4538. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Niki M. Eloshway/
Niki M. Eloshway
Examiner
Art Unit 3781

nme

/Anthony D Stashick/
Anthony D Stashick
Supervisory Patent Examiner, Art Unit 3781